

Part III - Administrative, Procedural, and Miscellaneous

Guidance on the Application of Section 911 to U.S. Individuals Working at Guantanamo Bay

Notice 2006-84

This notice provides guidance regarding the application of section 911 of the Internal Revenue Code to U.S. citizens and residents earning income from performing services at the U.S. Naval Base at Guantanamo Bay.

Section 911(a) of the Code allows a qualified individual to elect to exclude from gross income his or her foreign earned income (as defined in section 911(b)) and housing cost amount. Section 911(d)(1) generally defines a "qualified individual" as a U.S. citizen or resident whose tax home is in a foreign country and who meets certain requirements of residence or presence in a foreign country. Section 1.911-3(a) of the Income Tax Regulations defines foreign earned income as earned income from sources within a foreign country (as defined in section 1.911-2(h) of the regulations) that is earned during a period for which the individual qualifies under section 1.911-2(a) to make an election. Earned income is from sources within a foreign country if it is attributable to services performed by an individual in a foreign country or countries. Section 1.911-2(h) provides, in part, that the term "foreign country" when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States. Section 911(b)(1)(B) excludes from the definition of

foreign earned income certain amounts, including amounts paid by the United States or an agency thereof to an employee of the United States or an agency thereof.

Section 911(d)(8)(A) of the Code provides, generally, that if travel (or any transaction in connection with such travel) with respect to any foreign country is proscribed by certain regulations during any period, then: (1) foreign earned income does not include income from sources within that country attributable to services performed during that period; (2) housing expenses do not include any expenses allocable to such period for housing in that country, or for housing of the taxpayer's spouse or dependents in another country while the taxpayer is present in that country; and (3) an individual is not treated as a bona fide resident of, or as present in, a foreign country for any day during which the individual was present in that country during that period. The regulations identified in section 911(d)(8)(A) are those promulgated pursuant to the Trading With the Enemy Act ("TWEA"), 50 U.S.C. App. 1 *et seq.*, or the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, that include provisions generally prohibiting U.S. citizens and residents from engaging in transactions related to travel to, from, or within certain foreign countries. Section 911(d)(8)(B). Section 911(d)(8)(C), however, provides that the limitations of section 911(d)(8)(A) do not apply to any individual during any period in which such individual's activities are not in violation of these regulations.

In 1963, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued the Cuban Assets Control Regulations (the "CACR"), 31 C.F.R. part 515. The CACR were issued pursuant to TWEA. Section 515.201(b)(1) of the CACR prohibits persons subject to United States jurisdiction from all dealings in any property

in which Cuba or a Cuban national has or has had an interest since July 8, 1963, unless authorized by OFAC. OFAC interprets this prohibition to include a prohibition on all transactions related to travel to, from, and within Cuba. See, e.g., § 515.560 of the CACR, which authorizes certain transactions related to travel to, from, and within Cuba for participation in certain activities.

Section 911(d)(8) of the Code was enacted as part of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 1986-3 C.B. 1, 481). The Report of the Senate Committee on Finance (S. Rep. No. 99-313, 99th Cong., 2d Sess. 389 (1986)) listed Cuba as one of the countries for which Treasury regulations proscribed transactions related to travel of U.S. citizens and residents. Section 911(d)(8) continues to apply to Cuba. See, Rev. Rul. 2005-3, 2005-1 C.B. 334.

After consultations with OFAC, the IRS and Treasury have determined that for purposes of section 911(d)(8) of the Code, the CACR do not proscribe transactions related to travel, to, from, or within the U.S. Naval Base at Guantanamo Bay. For purposes of determining whether an individual's earned income is from sources within a foreign country for the purpose of section 911(b) and section 1.911-3(a) of the regulations, however, the individual who is performing services at the U.S. Naval Base at Guantanamo Bay is performing services within a foreign country. See section 1.911-2(h).

Accordingly, under section 911(d)(8)(C) of the Code, the limitations of section 911(d)(8)(A) do not apply to qualified individuals who are performing services at the U.S. Naval Base at Guantanamo Bay. Therefore, such individuals are eligible for the

exclusion under section 911 provided that they meet the other requirements of that section.

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